

1 HADLEY BATCHELDER  
Arbitrator/Mediator  
2 2121 San Diego Avenue  
San Diego, CA 92110-2985  
3 Telephone: (619) 297-9700, ext. 1501  
Fax: (619) 296-4284

4 CA State Bar Number: 36730  
5  
6  
7  
8  
9

10 In the Matter of an Arbitra- C.S.M.C.S. Number ARB-00-0046  
11 tion between Grievance Number G-00-012  
12 San Diego Education Asso- AWARD OF ARBITRATOR  
13 ciation  
14 and  
15 San Diego Unified  
16 School District  
17 Re: Peer Coach/Staff De-  
18 veloper

---

19 THE HEARING

20 On October 12, 2001, an arbitration hearing took place be-  
21 tween the San Diego Education Association, hereafter "SDEA,"  
22 and the San Diego Unified School District, hereafter SDUSD, and  
23 before the undersigned at 4100 Normal Street, San Diego, CA  
24 92103. The hearing was pursuant to Section 15.6 of the Collec-  
25 tive Negotiations Contract, hereafter "CNC," by and between the  
26 captioned parties effective July 1, 1998 through June 30, 2001.  
27 The SDEA was represented by DONALD P. MOORE, UniServ Field Organ-  
28 izer, and the SDUSD was represented by JOSE GONZALES, Assistant  
29 General Counsel.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29

1. Did the SDUSD unilaterally and without negotiating with SDEA change the job description and working conditions of Peer Coach/Staff Developer positions in violation of Article 14.9 of the Collective Negotiations Contract between the Board of Education, San Diego Unified School District, and the San Diego Education Association?
2. If so, what is the remedy?

FACTS (as found by the Arbitrator)

The SDEA and the Board of Education, SDUSD are parties to a collective bargaining agreement called the CNC. Section 14.9 of that agreement, titled "Peer Coaching/Assistance Program," contained an agreement to, among other things, establish a joint committee to develop "guidelines and models for the implementation of the peer coaching/assistance program in which unity members will assist their colleagues with alignment of curriculum, teaching, methodology, classroom management skills, and program specific responsibilities."

Pursuant to that Section of the CNC, agreement was reached on or about May 12, 1999, entitled "Agreement Between San Diego City Schools and San Diego Education Association Regarding Peer Coach/Staff Developer Selection Process." Paragraph 12 of that agreement states in relevant part that "[m]utual agreement leading to the creation of the Peer Coach/Staff Developer position is implemented under Section [sic.] 14.9 of the current contract." Paragraph 14 states that: "The district and the association will jointly solve problems and issues relating to implementation [of the Peer Coach/Staff Developer position] as they arise. The dis-

1 trict and the association will evaluate the effectiveness of the  
2 selection process and may revise aspects of the process by joint  
3 agreement if necessary." In broad terms this agreement also  
4 spelled out the criteria for selection and the qualifications and  
5 duties of these teachers. The next day a press release issued in  
6 which " the success of this system [the Peer Coach/Staff Devel-  
7 oper] will depend on a strong collaborative working relation-  
8 ship" between, among others, the SDUSD and the SDEA. The press  
9 release concluded with the following paragraph:

10  
11 Both the District [SDUSD] and Association  
12 [SDEA] will now work closely together to put the  
13 peer coach system into place for the coming school  
14 year. We want to establish a working relationship  
15 built on mutual trust that learns from the mistakes  
16 of the past and looks forward to collaborative ef-  
17 forts that always put first what is best for our  
18 students.

16 A memorandum of understanding (MOU) dated June 14, 1999, was  
17 adopted by the SDEA and SDUSD explaining further the involvement  
18 of San Diego State University in the certification process for  
19 the Peer Coach/Staff Developers and called for a posting of the  
20 job description and application requirements in May 2000.

21 In May 1999 the positions were posted (an announcement of  
22 the potential jobs) for bid (the way to apply for the positions)  
23 in which 11 Duties and Responsibilities were listed. This post-  
24 ing by the " personnel administration department" of SDUSD  
25 stated that the selection and training process " [w]ill be in ac-  
26 cordance with the attached agreement between San Diego City  
27 Schools and San Diego Education Association regarding Peer  
28 Coach/Staff Developer selection process."  
29

1           On September 24, 1999, in Administrative Circular No. 43,  
2 the SDUSD advised the school principals and SDEA representatives  
3 explaining, among other things, that there were 33 vacant peer  
4 coach/staff developer positions. The circular went on to say:  
5 " In collaboration with SDEA, the district will convert these po-  
6 sitions to fund 'peer coach/staff developer apprentices.'" The  
7 circular described the position referred to and described duties  
8 of the holders of the position in general terms.

9           The following year, in May 2000, a similar posting for these  
10 positions was made for the 2000-2001 school year, again referenc-  
11 ing the agreement between the SDUSC and SDEA. This year there  
12 were 10 listed duties and responsibilities which the arbitrator  
13 finds were essentially the same as those posted in May 1999. The  
14 wording and description of the duties and responsibilities  
15 changed slightly, but the substance of the duties and responsi-  
16 bilities remained unchanged. Both the 1999 and the 2000 " post  
17 and bid" contained duties and responsibilities generally the  
18 same as originally conceived and set forth in Joint Exhibit 5.

19           In early March or April 2000, the office of the Chancellor  
20 of Education (through Chancellor Alvarado's Executive Officer,  
21 Mary Harper) advised SDEA that, under a proposal currently before  
22 the Board of Education, the duties and responsibilities of new  
23 teacher mentors under the California State sponsored program  
24 called " Beginning Teacher Support and Assessment" program  
25 (hereafter BTSA) would me merged into the duties and responsi-  
26 bilities of Peer Coach/Staff Developers. Ms. Harper testified  
27 that she sought SDEA input into implementing that proposal and  
28 that the SDEA never got back to her.

1           Then on March 14, 2000, the Board of Education of SDUSD ap-  
2 proved a proposal of the Superintendent of Schools, the Chancel-  
3 lor of Education, Tony Alvarado, and his staff called the " Blue-  
4 print for Student Success in a Standards Based System" (hereaf-  
5 ter " Blueprint" ). For a number of reasons the Blueprint put  
6 the duties and responsibilities of mentors under the BTSA program  
7 into the duties and responsibilities of Peer Coach/Staff Devel-  
8 oper. The apparent goal was to keep the state funding for BTSA  
9 yet shift the responsibilities for continuing that program to the  
10 Peer Coach/Staff Developer positions. Ms. Monreal, Director of  
11 Literacy, who appeared to the undersigned to be the chief de-  
12 signer of the changes mentioned above, testified that the shift  
13 of duties from teacher mentors (under the BTSA program that pre-  
14 dated the Peer Coach/Staff Developer program) to peer coach/staff  
15 developers permitted funding for additional peer coaches and  
16 other important SDUSD projects.

17           The instant grievance was dated April 25, 2000, and in per-  
18 tinent part, complained that:

19           The District, by and through its representa-  
20 tives [sic.] violated the above-cited articles [of  
21 the CNC]. In the Blueprint, the District has made  
22 unilateral changes in Peer Coach/Staff Developer's  
23 job description as it relates to BTSA and mentor  
24 teacher responsibilities. Job descriptions were  
jointly negotiated. The parties cannot unilaterally  
change the negotiated agreement. The district  
[sic.] also made unilateral changes in the length of  
the school year.

25           Apparently the SDEA has abandoned its claim that the SDUSD  
26 made unilateral changes in the school year or it is the subject  
27 of another and different arbitration.  
28  
29

1           On June 8, 2000, Robin Whitlow, the Executive Director of  
2 SDEA, sent a memo to Ms. Harper complaining of the changes to the  
3 duties of Peer Coach/Staff Developers and claiming that " as of  
4 today, we [SDEA] have not been invited, informed or included in  
5 any meetings." This memorandum somewhat contradicts Ms.  
6 Harper's testimony about an April or early March meeting at which  
7 the SDEA was asked for input and never gave any.

8           Also apparently as part of the grievance process, a determi-  
9 nation was made by Deberie L. Gomez, Deputy Administrative Offi-  
10 cer, Human Resource Services Division, on June 27, 2000, that the  
11 grievance be denied. Her denial gave rise to this arbitration.

#### 12                           CONTENTIONS OF THE PARTIES

13           The SDEA contends that its grievance should be sustained be-  
14 cause the foregoing facts prove its chief complaint that SDUSD  
15 failed to negotiate the changes it made in the job description  
16 and duties of Peer Coach/Staff Developer positions contrary to  
17 SDUSD's agreement to do so with SDEA.

18           The SDUSD contends: (1) That it did not need to negotiate  
19 the changes made because they were not changes of substance and  
20 that the duties of the peer coaches were already broadly enough  
21 defined so that the new duties were already a part of the de-  
22 scription; and (2) That SDEA waived its right to negotiate when  
23 it did not respond to Ms. Harper's notification regarding the  
24 pending changes contained in the Blueprint.

#### 25                           ANALYSIS

26           The facts set forth above are nearly self-evident. There is  
27 no dispute that SDEA represents the affected teachers and par-  
28 ticipants in the Peer Coach/Staff Developer program. There is  
29 also no dispute (nor could there be) that SDEA is the exclusive

1 bargaining representative of those affected teachers. The only  
2 real question is whether by putting the duties and responsibili-  
3 ties of mentors under BTSA into those of the peer coach/staff de-  
4 velopers should have involved meaningful negotiations with SDEA  
5 and did not. The arbitrator concludes that the shift in respon-  
6 sibilities from former mentors under BTSA to the job of peer  
7 coach/staff developer was a major change which should have been  
8 negotiated with SDEA.

9 The entire tenor of the documents relating to the peer  
10 coaches is one of present and future collaboration between SDUSD  
11 and SDEA. The agreement of May 12, 1999, establishes the need  
12 for collaborative effort if changes are made in the basic job of  
13 the peer coach. That the SDUSD was eager to implement the  
14 changes outlined in the Blueprint is apparent. That the changes  
15 were perceived by SDUSD to be important and correct is also not  
16 in doubt. However, by making the changes in duties of the peer  
17 coach position, SDUSD did not, as was claimed, simply add duties  
18 that were already generally described. That the obligations of  
19 mentors under BTSA were significant and burdensome was testified  
20 to by credible teacher witnesses for SDEA. By adding these du-  
21 ties to the existing and well-established duties of the peer  
22 coaches without discussing the ramifications of the changes with  
23 SDEA seems to this arbitrator to be both arbitrary and capri-  
24 cious. To further claim that the announcement to SDEA officials  
25 the changes that the SDSUD was bound to adopt almost immediately  
26 thereafter was an attempt to collaborate on the issues does not  
27 to this arbitrator seem at all in keeping with the prior agree-  
28 ments between these parties and certainly not in keeping with the  
29 well-publicized spirit of cooperation purported to exist between

1 the SDEA and the SDUSD. In fact, by making the changes it did  
2 unilaterally, the SDUSD made it appear that the SDEA consented to  
3 or acquiesced in the merger of BTSA duties into those of the Peer  
4 Coach/Staff Developers. There was no consent by or meaningful  
5 collaboration with SDEA involved herein at all and there should  
6 have been.

7 AWARD

8 The grievance is sustained and the San Diego Unified School  
9 District, through its appropriate representative(s), is ordered  
10 to forthwith negotiate in good faith the changes in terms and  
11 conditions of employment created by the addition to the duties  
12 and responsibilities of Peer Coach/Staff Developers which the  
13 District unilaterally adopted around June 2000. The changes to  
14 the job description subject to this negotiation added to existing  
15 and new positions called Peer Coach/Staff Developer the duty of  
16 working with new teachers in the BTSA program using BTSA strate-  
17 gies.

18  
19 Respectfully submitted.

20 Dated October 26, 2001.

21 \_\_\_\_\_  
22 HADLEY BATCHELDER, Arbitrator  
23  
24  
25  
26  
27  
28  
29